

**In the  
Indiana Supreme Court**

**IN THE MATTER OF                    )  
AMENDED LOCAL RULES            )  
FOR COURTS OF RECORD IN        )  
SCOTT COUNTY                        )**

**NOTICE OF PROPOSED LOCAL RULE AMENDMENTS, FINDING OF GOOD  
CAUSE TO DEVIATE FROM THE SCHEDULE FOR AMENDING RULES, AND  
REQUEST FOR SUPREME COURT APPROVAL**

The judges of the courts or record of Scott County give notice of proposed amendments to local court rules on the assignment of criminal cases at LR72-CR2.2-1 and the appointment of special judges at LR72-TR79-9, find good cause to deviate from the schedule for amending local rules, and request Supreme Court approval. All new text is shown by underlining and deleted text is shown by ~~strikethrough~~.

The time period for the bar and the public to comment will begin on **May 28, 2011**, and will close on **June 24, 2011**. The proposed amendments to the rules will be adopted, modified or rejected after comments; and, the final version of the rules will be submitted to the Indiana Supreme Court for review and approval.

Comments may be made to Scott Circuit Court Judge Roger L. Duvall, One E. McClain Avenue, Suite 212, Scottsburg, IN 47170 or by email at: [duvall.roger@gmail.com](mailto:duvall.roger@gmail.com).

These amendments will be effective, if approved, on **July 1, 2011**.

Submitted this 13th day of May, 2011.

\_\_\_\_\_/S/\_\_\_\_\_  
ROGER L. DUVALL, JUDGE  
SCOTT CIRCUIT COURT

\_\_\_\_\_/S/\_\_\_\_\_  
MARSHA OWENS HOWSER, JUDGE  
SCOTT SUPERIOR COURT

**LR72-CR2.2-1**

**ASSIGNMENT OF CRIMINAL CASES**

The Courts of Scott County, Indiana, adopt the following rules for the assignment of criminal cases and the selection of special judges in criminal cases:

(A) All cases wherein the most serious charge is a Class C Felony or above shall be filed in Circuit Court.

(B) All cases wherein the person is charged under Indiana Code title 9, Motor Vehicles, shall be filed in Superior Court.

(C) All cases wherein the factual basis for the criminal charges, also, is the factual basis in the Circuit Court under Indiana Code 31-34 et. seq., Child In Need of Services, shall be filed in Circuit Court.

(D) All cases wherein a person is charged under Indiana Code Title 20, Compulsory School Attendance Law, shall be filed in Circuit Court.

(E) All juvenile delinquency cases shall be filed in Circuit Court and if there is a waiver from juvenile court into adult court, the case shall be filed in Circuit Court.

(F) All other criminal cases and infractions shall be filed in Superior Court.

(G) Any cases which may be joined by statute shall be treated as one case for purposes of determining which court shall be selected. The highest charge filed shall determine selection.

(H) When there is a recusal by the sitting Judge or when a motion for change of Judge has been granted, the Clerk shall assign a judge randomly from the following list of sitting and elected judges of the following Courts:

1. ~~John W. Webster~~ ~~Jennings Circuit Court~~
1. Jennings Circuit Court
2. ~~Ted Todd~~ ~~Jefferson Circuit Court~~
2. Jefferson Circuit Court
3. ~~Allison Frazier~~ ~~Jefferson Superior Court~~
3. Jefferson Superior Court
4. ~~Robert L. Bennett~~ ~~Washington Circuit Court~~
4. Washington Circuit Court
5. ~~Frank Newkirk~~ ~~Washington Superior Court~~
5. Washington Superior Court
6. ~~Bruce Markel~~ ~~Jackson Superior Court~~
6. Jackson Superior Court
7. ~~Gary Smith~~ ~~Jennings Superior Court~~
7. Jennings Superior Court
8. ~~Bruce McTavish~~ ~~Jackson Superior Court 2~~
8. Jackson Superior Court 2

(I) In the event a case is dismissed and refiled, the Judge last having jurisdiction in the dismissed case shall be the judge in the new case.

~~(J) Criminal cases for which the factual basis to support the filing of a criminal charge occurred before December 31, 2004 shall be filed in the Scott Superior Court~~

~~(K)~~-(J) Criminal cases in the Scott Circuit Court or the Scott Superior Court for which there was a disposition prior to ~~January 1, 2005~~ the date that the respective Judge of each Court

assumed office, and for which there is filed a motion, pleading or notice of any nature, other than a petition for post conviction relief or a probation revocation proceeding, shall, if accepted, be transferred to or addressed by the other court or referred to a Senior Judge for further disposition or assigned to a new Judge pursuant to Section H of this Rule. A petition for post conviction relief or a probation revocation proceeding in the Scott Superior Court, shall, if accepted, be transferred to the Scott ~~Superior~~ Circuit Court or heard by the Judge of the Scott Circuit Court or assigned a new Judge pursuant to Section H of this Rule. A petition for post conviction relief or a probation proceeding in the Scott Circuit Court shall be assigned a new Judge pursuant to Section H of this Rule.

LR72-TR79-9

#### APPOINTMENT OF SPECIAL JUDGES

- A. Selection of Assignment Judge. On or before October 1<sup>st</sup> of each year, the Judges of the Circuit and Superior Courts of Scott County shall meet with the presiding judges of Administrative District 14-23 for the purpose of selecting a judge designated as the assignment judge who shall serve the Administrative District for a period of twelve (12) months.
- B. Section H Appointments. In the event it becomes necessary to appoint a special judge under Section H of Trial Rule 79 of the Indiana Rules of Trial Procedure, the judge before the case is pending shall send notice of the need of the appointment of a special judge to the Administrative District's assignment judge who shall then make such assignment within five (5) days of receiving said notice.
- C. Method of Assignment. The Administrative District's assignment judge shall select special judges from a roster of the available judges in the Administrative District. The assignments shall be a sequential order beginning with the name of the judge following the last judge so assigned. If, however, ~~because of travel considerations a judge has been passed over or if a judge~~ is otherwise disqualified to hear a particular case, that judge shall be deemed to be the next in sequence until assigned a case. The assignment judge shall maintain a record of all assignments and shall issue a summary report of the assignments on a quarterly basis.

~~D. Travel Considerations. In making the selection of a special judge, the assignment judge shall consider that travel of more than forty (40) miles in one direction is not effective use of judicial resources.~~

~~E. D.~~ Roster of Available Judges. The roster of available judges in Administrative District ~~14~~ 23 shall be maintained by Court designation in the following sequential order and shall include senior judges as available.

- |   |  |
|---|--|
| (1) Clark Circuit #1                        | (10) <del>Harrison Superior</del>                                |
| (2) <del>Clark Superior #1</del> Circuit #2 | (11) <del>Orange Circuit</del>                                   |
| (3) <del>Clark Superior #2</del> Circuit #3 | (12) <del>Orange Superior</del>                                  |
| (4) <del>Clark Superior #3</del> Circuit #4 | (13)(9) Scott Circuit  |
| (5) <del>Crawford Circuit</del>             | (14)(10) Scott Superior  |
| (6) (5) Floyd Circuit                       | (15) <del>Washington Circuit</del>                               |
| (7) (6) Floyd Superior #1                   | (16) <del>Washington Superior</del>                              |
| (8) (7) Floyd County <u>Superior #2</u>     | (17) <del>Senior Judges approved for the requesting Court.</del> |
| (9) <del>Harrison Circuit</del>             | (11) <u>Senior Judges who agree to serve as</u>                  |
| (8) <u>Floyd Superior #3</u>                | <u>Special Judge</u>   |

~~F. E.~~ Appointment Order. Upon selecting a special judge, the assignment judge shall prepare an Order of Appointment and forward said Order to the judge before whom the case is pending ~~who shall then sign~~ and enter the Order of Appointment and forward a copy of the Order to the special judge and the attorneys of record.

~~G. F.~~ Acceptance of Jurisdiction. The Order of Appointment, when entered by the judge before whom the case is pending, shall constitute acceptance of jurisdiction by the appointed special judge unless the judge is otherwise disqualified, and no special appearance, oath or additional evidence of acceptance shall be required.

~~H. G.~~ Form of Order. The Order of Appointment shall be in the following form:

IN THE \_\_\_\_\_ COURT FOR \_\_\_\_\_ COUNTY

STATE OF INDIANA

(Caption)

ORDER OF APPOINTMENT

Under the provisions of Trial Rule 79(H) of the Indiana Rules of Trial Procedures, the Honorable \_\_\_\_\_ of the \_\_\_\_\_ Court of \_\_\_\_\_ County is hereby appointed to serve as special judge in the above-captioned case.

SO ORDERED AND ASSIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_ BY THE  
ASSIGNMENT JUDGE FOR THE 23<sup>RD</sup> JUDICIAL DISTRICT.

\_\_\_\_\_  
\_\_\_\_\_  
Assigned this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_  
Judge, \_\_\_\_\_ Court

\_\_\_\_\_  
\_\_\_\_\_  
~~Administrative District #14~~ #23  
Assignment Judge

¶ H. Implementation of Rule. In the event a selected Judge does not accept an appointment to serve as a special Judge under the provisions of section (D), (E) or (F) of Trial Rule 79 of the Indiana Rules of Trial Procedure, the judge before whom the case is pending shall notify the assignment judge of the need for an appointment of a special judge under this local rule.

¶ I. Certification to Supreme Court. If, under the provisions of this rule, no judge is eligible to serve as a special judge in a case, the assignment judge shall notify the judge before whom the case is pending who shall then certify such fact to the Indiana Supreme Court for the appointment of a special judge.  
If the judge before whom the case is pending is of the opinion that the particular circumstances of a case warrants selection of a special judge by the Indiana Supreme Court, said judge shall certify such facts to the Indiana Supreme Court for the appointment of a special Judge. Under such circumstances this Rule shall not be implemented unless the Indiana Supreme Court declines to appoint a special Judge.